

DRAFT MINUTES
Massachusetts Oil Spill Prevention and Response Act Advisory Committee
Thursday, December 14, 2010
Heritage State Park, Fall River, MA

Attendees:

Janine Commerford, MassDEP	Michael Brewer, USCG Sector Boston
Rich Packard, MassDEP	Trevor Hughes, USCG Sector Boston
Chris Ayers, MassDEP	Tom Bushy, Deputy Pilot Commander – D3
Karen Peltó, MassDEP	Clint Walker, Northeast Pilots
Dan Crafton, MassDEP	Mark Foley, Boston Coastwise Pilots
David Janik, MA EEA / CZM	Joe Gibbs, Barnstable Harbormaster
Gordon Bullard, MA Dept. of Revenue	Mark Rasmussen, Coalition for Buzzards Bay
Kevin Partridge, MA Dept. Fire Services	Kristin Decas, New Bedford HDC
Elise DeCola, Nuka Research	Garrett Keenan, Green Seal Environmental
Gary Oliveira, McAllister Towing	Gerard Bryant, Green Seal Environmental
Kirk Franklin, Frank Corp	Trevor Lloyd-Evans, Manomet Center
Steve Dodge, Mass Petroleum Council	Terri Goldberg, NEWMOA
Greg Gifford, Steamship Authority	Rachel Smith, NEWMOA

Welcome / OSA Membership Updates / Litigation Status:

Janine Commerford, Assistant Commissioner, Massachusetts Department of Environmental Protection (MassDEP), welcomed the group and reviewed the agenda planned for the meeting. She provided a brief update on changes to the Oil Spill Act Advisory Committee (OSAAC), including the additions of Captain Thomas L. Bushy, who replaced Capt. Gregg Farmer as a representative for the state marine pilots, and Lt. Cmdr Pamela Garcia, who replaced Commander Paul Arnett as a representative for the U.S. Coast Guard (USCG) Sector Boston. Ms. Commerford also reported that the Massachusetts Natural Resource Damages (NRD) Program is now housed under MassDEP.

Ms. Commerford asked Karen Peltó from the MassDEP NRD Program to explain its purpose. In the event of an oil spill, the responsible party is obligated to clean up the spill and to compensate the public for associated damages to natural resources. The NRD program participates in the process of assessing the extent of injury to natural resources and determining what is adequate compensation for the damage. The NRD Program is currently finalizing its fourth round of settlements for oil spill damage in New Bedford Harbor. The public comment period recently ended, and Ms. Peltó expects the case to be settled within a few months. The public comment period for the other NRD case, concerning a proposed Consent Decree as a settlement from the Bouchard spill, is being extended to at least January 20, 2011. Ms. Peltó noted that natural resource damages associated with this claim include injuries to surface waters, shellfish, piping plovers and other birds, and recreational use. Millie Garcia-Serrano is the lead officer for this claim and is currently conducting outreach to the neighboring towns so that the public can be aware of the proposed settlement and relevant public comment period.

Ms. Commerford then asked Chris Ayers, MassDEP Office of General Counsel, to brief the group on the status of two lawsuits associated with the OSA. The first case, filed by the U.S. government and American Waterways Operators, challenged the 2004 Mass Oil Spill Act requiring industry to hire tug escorts and to increase manning requirements. The second case, filed by the American Waterways Operators, challenges the 2009 OSA amendments concerning vessel notification and requesting of a state marine pilots. These provisions are voluntary and the Program does not place a financial cost on industry. The provisions apply to double-hulled vessels carrying > 6000 barrels of oil while transiting Buzzards Bay and the Cape Cod Canal. However, if an eligible vessel operating in Buzzards Bay and the Cape Cod Canal does not notify and request a state pilot and an oil spill occurs that they can be subject to triple fines. The plaintiffs argue that these penalties are so excessive that the amendment compels compliance with the voluntary program. There are no current rulings or injunctions prohibiting the implementation of the 2009 OSA provisions.

Status of the Marine Pilot and Escort Tug Programs:

Rich Packard, Program Manager, MassDEP, and Captain Tom Bushy, Deputy Commissioner of Pilots for District 3, reviewed the status of the two OSA mandated programs:

State Marine Pilot Program

The OSA states that double-hulled vessels carrying over 6,000 barrels of oil while transiting Buzzards Bay and the Cape Cod Canal may request a state-licensed marine pilot to go on board the ship and help navigate the canal. Capt. Bushy noted that single-hulled vessels crossing the canal are already required under federal regulations to hire a federal marine pilot; therefore, they are not eligible for the state-funded program.

This Program began in March 2009. During a one-year period, the Massachusetts Emergency Management Agency (MEMA) received state pilot assistance requests for 300 transits from 11 companies, costing \$786,429 (paid by MassDEP to the pilots). MassDEP contracts with the Northeast Marine Pilots Association (Newport, RI) and Boston Coastwise Pilots (Winthrop, MA) to implement this Program. There are 20 licensed state marine pilots available to assist with transits in the Buzzards Bay Canal.

Escort Tug Program

The OSA states that MassDEP shall provide a state-funded tug escort to eligible vessels operating in Buzzards Bay and the Cape Cod Canal. After a competitive bidding process, MassDEP awarded a contract to McAllister Towing (Narraganset Bay, RI) to provide escort tug services. Vessels may notify in advance of when they are planning to enter the canal so that the escort tug can meet them at the canal. McAllister also monitors vessel traffic through an automated identification system (AIS).

The statute includes vessel specifications for the escort tugs, such as horse power and firefighting equipment. McAllister has one primary tug and five back-up tugs that meet the specifications; however there are times when multiple vessels are moving through the canal and require an escort tug. In these cases, Mr. Packard explained that the statute includes a waiver provision, which allows the use of an escort tug that does not meet all of the specifications. He stated that

MassDEP has granted a waiver six times since the beginning of the program – mostly due to high vessel traffic.

If a tug is needed to assist a vessel in distress the tug will negotiate a private contract with the vessel requiring assistance and go off contract with MassDEP. Since the program began, McAllister tugs have received three requests for assistance – due to weather, engine troubles, and a small fire that occurred on one of the vessels. Capt. Bushy noted that there are some instances where a vessel requires assistance but may be reluctant to take it because of the costs. Several attendees noted that in certain, the USCG can require the vessel to accept assistance through a Captain of the Port Order.

The State Provided Escort Tug Program began in March 2010. In the past eight months, the Program provided 193 tug escorts at a cost of \$1.4 million. MassDEP anticipates a yearly average of approximately 300 escorts and a total expense of \$2.4 million.

Status of Ongoing Program Implementation Activities:

Mr. Packard and Elise DeCola, Nuka Research, reviewed the status of the ongoing OSA program activities:

Equipment Procurement

Mr. Packard reported that MassDEP has completed its distribution of 76 spill equipment trailers to over 60 communities. They purchased an additional 2,000 feet of offshore boom, which has been stored at the Massachusetts Maritime Academy (MMA) and at the state pier in New Bedford. MassDEP plans to purchase additional spill response equipment for Boston Harbor in the coming year and possibly some regional equipment, such as skimmers.

MassDEP is continuing its commitment to provide annual maintenance and restocking of trailers, as well as training first responders on how to use the equipment. Mr. Packard stated that MassDEP has developed a Deployment Policy (i.e., standard operating procedure), which provides guidance for communities on when and how to use their trailer in a mutual aid scenario. He noted that in the case of large spills affecting multiple communities, mutual aid decisions will occur at the unified command center. MEMA and the USCG will help MassDEP implement this protocol.

Geographic Response Plans

Ms. DeCola reported that Nuka Research recently completed a Geographic Response Plans (GRP) for Boston Harbor. She noted that Boston Harbor is unique in that it is a large commercial port with heavy vessel traffic. Unlike other coastal areas, where there are lots of wetlands and sensitive environmental areas that must be protected, the Boston GRP also focused on security, historical and cultural issues. Ms. DeCola stated that many stakeholders participated in the GRP development process for Boston and that the project was successful. There are a couple of issues that need to be fine-tuned, but she expects to post the final plans on the web shortly. Nuka has completed GRPs for most of the Massachusetts coastline and plans to develop GRPs for the South Shore next year.

GRP Field Testing Exercises

Mr. Packard stated that MassDEP plans to continue to work with Nuka to test the GRPs in the field, as part of first responder training exercises using the MassDEP oil spill trailer equipment. They have conducted several field exercises, and the response from participants is generally positive. The only drawbacks are budget constraints that hinder participation from many of the local towns. For example, in order for one firefighter to participate in the training exercise, the fire department in that town has to put someone else on duty when they normally would not be working, and therefore, compensate them with overtime pay, which is over their budget. MassDEP is working on finding some funding to help alleviate the burdens on the municipal budgets for their participation in the training.

Overtime Funding Grant

MassDEP and Nuka are exploring ways to help communities pay for their first responders' participation in the oil spill response training exercises. One of the possible solutions is a homeland security grant administered by the Northeast Regional Advisory Council (NERAC) and Southeastern Regional Planning & Economic Development District (SRPEDD). MassDEP has submitted a grant proposal for the program to the training council, including a cost estimate and proposed parameters for towns requesting financial assistance for their participation in the exercise. The next meeting of the NERAC is on January 6, 2011. MassDEP hopes to get approval of their proposal at this meeting and allow communities to start applying for this money to use as a stipend for training. Mr. Packard noted that it would be helpful if communities could provide letters of support from fire chiefs and harbor masters, touting the value of the oil spill response exercise training program.

OSA Program Plan & Trust Fund Status:

In April 2010, the MassDEP Commissioner raised the 2¢ per barrel fee on petroleum products to 5¢ per barrel. These funds go into the OSA Trust Fund to pay for the various OSA programs and activities. FY 2011 will be the first complete year that the fee is 5¢ per barrel. MassDEP anticipates the annual revenue to be approximately \$3.2 million.

FY 2011 will be the first year that both the state marine pilot program and escort tug program are in effect. MassDEP estimates that these programs will cost approximately \$800,000 and \$2.4 million per year respectively. In addition to these mandatory programs, MassDEP expects to continue with other activities, including maintenance of the spill equipment trailers; development of the South Shore GRPs; oil spill response field trainings; funding proposal; administrative activities related to annual updates to the plan and budget; and other projects. As a result, the OSA Trust Fund may run a slight deficit in FY 2011. Mr. Packard noted that MassDEP will continue to closely monitor the revenue and expenses of the fund.

New Bedford Harbor Waste Oil & Bilge Water Collection Facility:

Garrett Keenan, Green Seal Environmental, working with the New Bedford Harbor Development Commission (NBHDC), presented a proposal to use funds from the OSA to fund part of a bilge water collection and treatment facility in New Bedford in order to address the chronic small

“mystery” oil spills that occur in the harbor. Green Seal Environmental examined several different scenarios and evaluated similar facilities in other states to find the best solution for New Bedford Harbor. They also interviewed key stakeholders, including boat owners, the USCG, and MassDEP – all of who expressed support for this project.

Based on their research, Green Seal Environmental and the NBHDC are proposing a truck-based collection program with centralized treatment in underground double-walled tanks. The treatment system would be two-tiered, consisting of a gravity coalescing oil-water separator for primary treatment and a cartridge filter type oil-water separator for secondary treatment. The separated oil collected would be reclaimed and burned as fuel. Mr. Garrett explained that this would be the most feasible and cost effective option.

The capital needed for the design and installation of this facility is approximately \$700,000 (\$228,000 for treatment equipment plus \$388,000 for the collection tanks, treatment units, and storage building). Kristin Decas, Executive Director, NBHDC, explained that the operation and maintenance of the system would be covered by increased dockage fees paid by vessels. She asked that MassDEP and the OSAAC consider using funds from the OSA Trust Fund to help support part of the capital costs for this project.

Ms. Commerford expressed an interest in helping, but is unsure about the level of funding that MassDEP could provide. Ms. Decas asked the OSAAC members if they knew of additional funding sources that might be appropriate for this project. Some of the possibilities mentioned include the U.S. Sea Grant Program, EPA, and the National Oceanic and Atmospheric Administration (NOAA).

New Business / Next Steps:

Ms. Decas will provide MassDEP with a one-page fact sheet, the Feasibility Study, a detailed budget, and a copy of the PowerPoint presentation from the meeting so that OSAAC members can review the proposal in more detail. Mr. Packard will make this information available to the rest of the Committee.

Joe Gibbs, Barnstable Harbormaster, asked that MassDEP and the OSAAC consider future training support for Mass Harbormasters. He noted that Harbormaster are an important group of oil spill first responders and they are looking to enhance the training curriculum for Harbormasters and would like MassDEP to consider providing additional training for their group. Mr. Packard will discuss with Mr. Gibbs in more detail what the details of the training would be .

Adjournment:

Ms. Commerford thanked everyone for their participation and adjourned the meeting. She noted that the presentations and meeting minutes will be posted on the MassDEP OSA website.